

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

SIERRA CLUB,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY and  
E. SCOTT PRUITT, Administrator,  
United States Environmental Protection  
Agency,

Defendants.

Case No.: 1:10-CV-01541-CKK

**EPA’S SUPPLEMENT TO ITS  
MOTION TO EXTEND PARTIAL CONSENT DECREE DEADLINE**

On August 18, 2017, EPA filed a Motion to extend its Partial Consent Decree deadline to sign for publication a notice promulgating a federal implementation plan (“FIP”) or unconditionally approving a state implementation plan (“SIP”) for Texas that satisfies the requirement in Clean Air Act (“CAA”) section 110(a)(2)(D)(i)(II), 42 U.S.C.

§ 7410(a)(2)(D)(i)(II), which requires implementation plans to contain adequate provisions prohibiting emissions that will interfere with measures required to be included in other states’ SIPs to protect visibility (referred to as “visibility transport” requirements), for the 1997 ozone and fine particulate matter (“PM<sub>2.5</sub>”) national ambient air quality standards (“NAAQS”).<sup>1</sup> On the same day, the Court issued an Order requiring EPA to file a supplement “explaining (1) why such a lengthy extension is required (for example, why is TCEQ not able to submit a SIP sooner

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<sup>1</sup> The Partial Consent Decree may also be satisfied with a partial FIP and partial approval of a SIP. *See* Docket No. 23 (“Partial Consent Decree”) ¶ 2(d).

than March 31, 2018?), (2) if an extension were not granted, is the EPA prepared to sign for publication a notice promulgating the FIP by September 9, 2017?” August 18, 2017, Minute Order. EPA hereby supplements its Motion to answer the Court’s questions.

### **1. Question 1**

A shorter extension than December 31, 2018, would not allow EPA sufficient time to pursue the approach described in the Coleman Declaration submitted with EPA’s Motion (“First Coleman Declaration”) and the Memorandum of Agreement (“MOA”) between EPA and Texas. As explained in the First Coleman Declaration, a SIP-based approach most efficiently uses state and federal resources, provides the most certainty to the State and regulated sources, and is most faithful to the cooperative federalism design of the CAA. *See* First Coleman Declaration ¶¶ 13-17; EPA Memorandum in Support 6-9.

As explained in the attached August 23, 2017, letter from the Chairman of the Texas Commission on Environmental Quality (“TCEQ”), the schedule for State action under the MOA, which requires the development of a proposed SIP by March 31, 2018, is ambitious given the amount of work TCEQ has to do and the procedural requirements of State and Federal law. *See* Exhibit 1, Attachment 1 (August 23, 2017, Letter) at 1. First, TCEQ states that the MOA’s March 2018 timetable is aggressive compared to historical timelines. *See id.* TCEQ explains that past Texas SIPs have required 48 months or more to develop, and the 2009 SIP for regional haze required many years. *See id.* Thus, TCEQ views the 7-month March 31, 2018, submission date as an extremely expedited schedule. *See id.*

Second, TCEQ characterizes its task of developing a trading program as requiring “an enormous amount of work to identify program participants, requirements and restrictions on who can and who must participate, emission allowances, rules for trading and selling allowances, life

of allowances, use of allowances, contingency requirements, reporting and compliance requirements, penalty requirements, and tracking mechanisms.” *See id.* at 2. TCEQ further states that other trading programs within the State have required 17 months to develop. *See id.* at 2. Finally, TCEQ explains that the public review periods and notice-and-comment requirements of State and Federal law will require State resources and time. *See id.* at 2.

Furthermore, as explained in the First Coleman Declaration, EPA has committed to process the Texas SIP revision in parallel with the State’s rulemaking process to reduce the time between state submission and final action. First Coleman Decl. ¶ 16. Indeed, as described in more detail in the Coleman Declaration attached to this Supplement (“Second Coleman Declaration”), until March 2018, EPA will work closely with TCEQ to facilitate the State’s development of the SIP. *See* Exhibit 1 (Second Coleman Declaration) ¶ 9. After submission in March 2018, EPA will issue a proposed rule and take public comment. *See id.* ¶ 10. EPA will then require several months to respond to comments, complete technical analyses, and work with TCEQ to develop Texas’s final SIP submission. *See id.* ¶ 9-10. Then, after submission of the final SIP, EPA will require two months to finalize legal and technical support documents and the Federal Register notice for final action on the SIP submission. *See id.* ¶ 10. EPA believes such a schedule is the minimum amount of time needed to accomplish the tasks required to take final action without procedural flaws. *See id.* ¶ 8.

Accordingly, the December 31, 2018, deadline requested by EPA represents the minimum time required for EPA work with Texas to implement the CAA’s cooperative federalism design and most efficiently accomplish the goals of the statute.

**2. Question 2**

The Office of the Administrator has stated that the Agency will comply with the terms of the Partial Consent Decree in the absence of an extension and be prepared to sign for publication a notice promulgating a FIP. *See id.* However, as explained more fully in EPA's Motion, such an approach would divert Agency resources away from the CAA's state-first cooperative federalism approach and result in duplication of effort between EPA and TCEQ and resulting inefficiencies.

Respectfully submitted,

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Dated: August 23, 2017

/s/ Stephanie J. Talbert

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